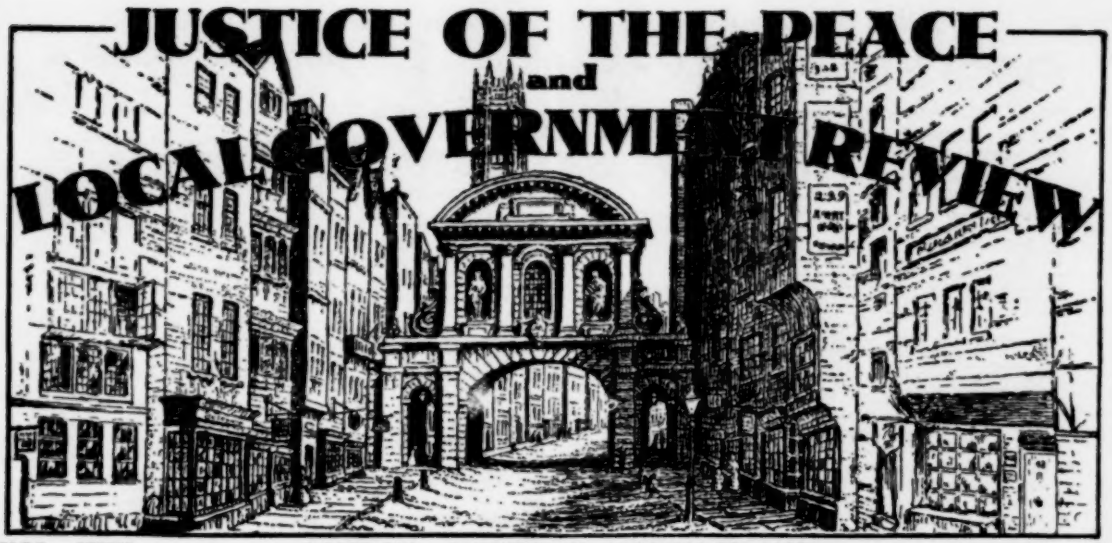

VOL. CXVI LONDON: SATURDAY, MARCH 22, 1952 No. 12

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REPORTS

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G. A. WHEATLEY,
Clerk to the Probation Committee.

The Castle,
Winchester.
March 10, 1952.

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NOTES of the WEEK

Poor Prisoners Defence

In the past, there has been some criticism of the way in which the Poor Prisoners Defence Act, 1930, has been used, sometimes not used, by justices. It has been said that some magistrates' courts failed to grant certificates when there was good cause to grant them, and that the question of expense to the public was allowed to weigh too heavily. On the other hand, there have been a few instances in which judicial disapproval has been expressed about the grant of defence certificates when legal representation was really unnecessary.

The Legal Aid and Advice Act, 1949, which is being brought into force piecemeal, directs that doubts as to the grant of legal aid are to be resolved in the applicant's favour, whether the question be as to the defendant's means or as to the interests of justice, and the provision is now being made effective.

Hitherto, the practice of most courts has been to make only the most informal inquiry on the question of means, but henceforth an applicant may be required to furnish a written statement to enable the court to make its decision. The form of statement is prescribed by the Legal Aid in Criminal Cases (Statement of Means) Regulations, 1952.

One great drawback to the smooth working of the Poor Prisoners Defence Act has been the fact that an application for legal aid could not be made until the defendant appeared before the court. This has often meant that upon the grant of a legal aid certificate the solicitor assigned, being without instructions or knowledge of the case, was bound to ask for an adjournment: possibly to the inconvenience of the prosecution. It will now be open to a defendant to make application personally or by letter at any time after he has been served with a summons or has been arrested.

These changes take effect on April 1 in consequence of ss. 18 (1) and (3) and ss. 19 and 20 of the Legal Aid and Advice Act, 1949, being brought into operation.

Husband and Wife: Condonation

It has been laid down in a number of cases, such as *Viney* v. *Viney* [1951] 2 All E.R. 204; 115 J.P. 397, that where a husband with full knowledge of the facts, and without fraud on her part, resumes sexual relations with his wife that is conclusive proof of condonation of her previous adultery.

In *Maslin* v. *Maslin* [1952] 1 All E.R. 477 the question was one of condonation of desertion, and the same principle was again applied. In the course of his judgment, Havers, J., said he was satisfied that the wife had deserted her husband and that that desertion continued until an occasion in April, 1951, when he had sexual intercourse with her. On a number of occasions when the husband called upon her and asked her to return to him she said she would never do so. After the husband had filed his petition, based on desertion, the wife several times, asked him to go and see her and invited him to stay the night. He refused. In April, 1951, however, he consented to stay with her and reluctantly had connexion with her. In his evidence, the husband said he had not made up his mind whether he would go back to her. A few days later he wrote to her saying that he could not agree to live with her again.

For the husband, it was sought to distinguish the case from *Henderson* v. *Henderson and Crellin* [1944] 1 All E.R. 44, and *Viney* v. *Viney, supra*, on the ground that the husband did not have sexual intercourse with his wife with the express object of trying to effect a reconciliation, but the learned judge observed: "It seems to me that the intent which the husband has at the time he has sexual intercourse with his wife, he having full knowledge of her matrimonial offence, is completely immaterial. It is the fact that he has sexual intercourse with his wife which, in my view, constitutes condonation, he having full knowledge of her matrimonial offence." Having rejected the suggestion that the husband's mind has been affected by some fraudulent representation on the part of the wife, the learned judge found that her desertion had been condoned, and he dismissed the petition.

Amending an Order of Disqualification

In a recent application, heard before a metropolitan magistrates' court, under s. 7 of the Road Traffic Act, 1930, for the removal of an order of disqualification made under s. 6, the solicitor for the applicant, no doubt realizing that the court was not very favourably disposed towards the application, made the suggestion that the court should amend its original order in such a way as to enable his client to drive a trade vehicle—as he had been offered a position in which he would have to drive a van—while upholding the disqualification from driving private cars. He referred to the proviso to s. 6 (1) "Provided that, if the court thinks fit, any disqualification imposed under this section may be limited to the driving of a motor vehicle of the same class or description as the vehicle in relation to which the offence was committed," and argued that the words "any disqualification imposed . . . may be limited" might be given effect to at any time, and not merely when the original order was made.

The magistrate said that he was satisfied that the circumstances of the defendant had altered since the time the order of disqualification was made, and that if the present circumstances

had existed at the time the defendant was first before the court, he had little doubt that the court would have had recourse to the proviso and limited the disqualification. He would have been glad to act on the suggestion made by the applicant's solicitor, but he was driven to the conclusion that he had no power to do so. He pointed out that there was no machinery provided whereby a court might consider an application to *limit* the disqualification to a particular class of vehicle; in his view it was impossible to separate the proviso from the earlier part of s. 6—the proviso merely gave the court a discretion at the time of making the order; lastly the application before him was made under s. 7 (3) which provided that the court might either (1) remove the disqualification, or (2) refuse the application—no other alternative was open.

The question whether the courts should be given power to amend an order of disqualification in this way is perhaps worthy of attention when the revision of the Road Traffic Acts is under consideration.

False Pretences and Attempts

Our New Zealand contemporary *The Honorary Magistrate* maintains a service department on the lines of our practical points columns, and we often find it interesting to observe the differences between their law and our own, although, as might be expected, the two are in most respects much alike.

A recent question put to *The Honorary Magistrate* concerned alleged cases of misrepresentation on factory time sheets, and the possibility of prosecuting for obtaining money by false pretences. The answer included the following: "We cannot cite any case to cover the point you raise. If you know the time sheets to be wrong but still pay out on them then you are blocked because it has been held that if a person knew a pretence to be false and still hands over his property (your money) thereon, it cannot be said to have been obtained by a false pretence. If you know the time-sheets are wrong and refuse to pay on them there may have been an attempt, but it takes some proving."

It is obviously true that there could not be a conviction for the full offence of obtaining by false pretences if the false pretence did not deceive, but according to English law there could be a conviction for an attempt even though the prosecutor chose to part with his property in spite of the falsity of the pretence being realized by him. In *Halsbury* (Hailsham edn.) vol. 9, at p. 5731, it is stated: "If at the time when a chattel is obtained the prosecutor knew that the pretence was false, the defendant cannot be convicted of obtaining the chattel by false pretences" but it is added "he may however be convicted of attempting to obtain. *R.* v. *Roebuck* (1856) Dears and B. 24, C.C.R."

Horse and Other Flesh

The donkeys, alleged in London newspapers to be finding their way to West End restaurants, can probably be taken with a pinch of salt. We hasten to say that by donkeys we mean *asini*, not *homines insipientes*. Even if the story has a sure foundation, and the rank and fashion of London is consuming *vol auvent de baudet* under some other foreign name, the larger public which eats in English need not so far very much concern itself. True or not, however, the story is symptomatic of something now going on. Some weeks ago all members of the Sunday broadcast programme *Country Magazine*, which that week came from Northern Ireland, deprecated the traffic in horseflesh, the farmers in the studio finding it horrible that horses should be eaten. Natural as is this sentiment, which anthropologists might call exophagous totemism, when farmers are concerned, we fear it is too late in the day to regard horses, like snails and frogs, as no fit diet for an Englishman. For the best part of ten years the horse has in fact been eaten in this country, and that not merely by cats, dogs and aliens who brought continental habits with them. At the time of greatest scarcity there was a good deal of pretence, with dealers asking fancy prices, and professing not to sell except for human consumption, while customers in the queues pretended to each other that, in their case, the meat they bought was "of course" only for their animals—just as the hotel management charged with selling horseflesh in its expensive restaurant set up the defence that it had been bought only for the staff. There is no means of knowing how much of the horseflesh now available in English towns goes into human and how much into feline and canine stomachs, but it is reasonably certain that enough passes into the kitchen to call for further examination of the legal safeguards for its handling before the customer has bought it. If and in so far as it is avowedly sold for human consumption, some provisions of the Food and Drugs Act, 1938, and other provisions of pre-war legislation designed to secure purity of food, will apply. But there are provisions still applying only to the orthodox and old-fashioned types of meat, and there is even an order laying down in some detail rules for the handling of whalemeat, while the Horseflesh (Control and Maximum Prices) Order, 1941, S.R. & O. 1941, No. 1862, was revoked by S.I. 1950, No. 281 and seems, for what it was worth, not to have been re-enacted or replaced by any similar provisions.

It may have been at one stage understandable that the Government and departments concerned were reluctant to admit to the world that Great Britain now stood in need of the same precautions about horse meat as about the flesh of oxen, sheep, and pigs. Now that we have become eaters of pretty well every hoofed beast (not to mention whales), the time for pretence has passed, in the application of measures to ensure that the flesh shall be clean and uncontaminated.

A Lancashire Probation Report

Lancashire No. 9 Probation Committee is constituted for Manchester County Petty Sessional Division and the Borough of Eccles. In his report for 1951, the senior probation officer, Mr. G. P. Newton, makes some interesting comments on probation and probationers. He is well aware that not every probationer who completes the probation period without having to be brought back to court can be written down as a success. As Mr. Newton says there are few people who would not consent to be put on probation as an alternative to a probable sentence of imprisonment, but often the response to supervision is purely superficial, especially in the early stages. Statistically, however, they may rank as successes. Then there are the mentally dull who can often be propped up during a period of supervision, but whose future is not promising. These, again, may appear in statistics as successes. Of course, the real answer is that well-informed observers of probation results pay far less attention to good behaviour during probation than to continued good behaviour after supervision has ended.

Dealing with probation work among children, the report emphasizes the need for co-operation from parents, and adds "Too often the parents persist in regarding the probation officer as another official who will take over their willingly surrendered responsibilities." The juvenile court has tried to counteract this tendency by making greater use of the power to order a parent to give security for the good behaviour of his child. Another disquieting tendency is that of some parents to make it quite clear to the probation officer that they would rather the child were removed from home. In these cases the result is often the making of an approved school or fit person order, in the interests of the child, but it is unfortunate when a neglectful parent is able to shed his responsibility in this way.

There is a curious misapprehension about clinics, which we have not previously met. The report says : " It is also alarming to encounter the widely held belief that before a child can be interviewed at a child guidance clinic he must first appear in court."

In matrimonial work, the report shows that there is more promise of real reconciliation when the parties have voluntrailly approached the probation officer that when they have been referred to him after a court hearing. After a hearing, the position may be that the wife may not really be interested in reconciliation but is afraid that refusal to consult the probation officer might be prejudicial to the success of her application. On the other hand, a husband may be interested in reconciliation, but for the wrong reasons—*i.e.*, to escape the financial obligations of an order. There is another danger of which, no doubt, probation officers are well aware : " The function of the probation officer is also frequently misunderstood by those who regard him, not as an independent conciliator, but as a possible witness." All of this shows how delicate is this work of attempting reconciliation, and how necessary it is that those who undertake it should possess the right qualities and training.

Drunkenness

Those who can carry their memories back forty or fifty years can find some satisfaction in the fact that drunkenness is less prevalent today than it was then. The magistrates' courts of fifty years ago had to deal with long lists of charges of being drunk or drunk and disorderly and with many other charges where the offence could be attributed directly or indirectly to excessive drinking. The reduction in drunkenness was due to many causes.

It will not do to be too complacent, as there seems to be a present tendency towards more drunkenness. In his report to the Licensing Justices of the County Borough of Rochdale for the year 1951, the Chief Constable, Mr. S. J. Harvey, makes the following statement :

" Statistics show that during the last five years there has been a steady increase in the number of arrests and convictions for drunkenness, both nationally and locally. This is a matter about which any thinking person, without necessarily being a sociologist, is far from happy. It is not merely an incidental or casual increase, but one of considerable proportions. There was, after the first world war, a similar trend for a few years, but later there was a considerable drop in drunkenness. Conditions after the more recent war have followed the same course but there is, as yet, no sign that the peak has been reached. The total number of convictions throughout the country for drunkenness in 1947 was 25,170. In 1950 this was 47,717, or nearly double. The appropriate figures locally were 21 and 62, or nearly treble. The national figures for 1951 are not yet known, but in Rochdale there were 94 prosecutions for drunkenness, or over four times as many as in 1947. This is very disturbing, and so far as can be seen from reports from other police forces, it is likely to be reflected generally."

Coroners

So long ago as 1936 the Departmental Committee on Coroners spoke of what it considered to be defects in the system then existing. In its report (Cmd. 5070) it said, *inter alia*, " There are no less than 309 coroners, all but a very few having life tenure with no retiring age, and the great majority being part-time officials . . . It is clear that many of the part-time coroners, because of the smallness of their districts, have little experience or prospect of experience in the conduct of their duties. It does not seem practicable as an immediate measure to recommend a complete or thorough-going reconstruction of this body. As things are, if reconstruction is to be effected, it must be as a result of a gradual process of change." The committee went on to discuss some alternative methods of curing the defect which, in the passage just quoted, it had diagnosed as existing. It called for " radical readjustment of coroners' districts," and the putting of a " statutory obligation " on county councils to enlarge these districts as vacancies made the process possible, unless the process could be carried out effectively by administrative arrangement. While the Association of Municipal Corporations had suggested the abolition of coronerships in non-county quarter session boroughs of less than 20,000 inhabitants, as vacancies occurred, the committee recommended that, as vacancies occurred in non-county boroughs of less than 75,000 inhabitants, the area of the borough should be merged for coroners' purposes in a neighbouring county. This recommendation was of a familiar type. As we said recently when speaking of recorders, and of the courts of quarter sessions in small boroughs and the recently remaining liberties, we find it difficult to take as a matter of course the view that the big unit of administration is better than the small, or to believe that the county and the county borough are divinely ordained to share governmental functions. The test often suggested when boundary revisions are discussed, namely whether a unit is large enough to justify the salary of a whole-time officer, may be good enough as a working guide in some contexts, but has no universal merit in our eyes. We do not, for instance, know that experience since 1936 has shown particular disadvantages to attach to a coroner's area where deaths are few, or that part-time coroners are *per se* objectionable ; we think there is something to be said for a coroner whose livelihood is derived from the quick as well as from the dead, and from consorting with the world instead of largely with officials and policemen. It is true, as is pointed out in a circular lately issued by the new Home Secretary, which calls fresh attention to the report of 1936, that most of the existing areas of coroners' jurisdiction have survived with little alteration from times when their limits were dictated by means of travel and communication, which have greatly changed, but we are less troubled than he seems to be by the fact of this survival. It is at any rate satisfactory that he does not for the present feel justified in promoting legislation on the subject, because he thinks that it would be preferable for the process of revision to be carried out under their existing powers by the county and borough councils who are responsible for the appointment of coroners. The central recommendation of the circular, expressed as being " urged most strongly," is that whenever a county coronership falls vacant the county council should consider taking the opportunity to merge the district with one or more of the other coroners' districts into which the county is divided, and that whenever a vacancy occurs in either a county or a borough coronership, the county and borough councils in the area should consider, in consultation, appointing the same individual as coroner of both the borough and one of the adjacent county districts. Whatever opinion be held about the policy of this, there can, we think, be no real doubt about that part of the same circular which deals with the age of coroners. The coroner holds his office for life, and it may be quite true that there is a temptation to postpone retirement until after an age at which it is normally considered desirable to lay down a public office. Section 6 (1) of the Coroners (Amendment) Act, 1926, gives the councils of counties and boroughs discretion to award pensions to coroners, and s. 6 (2) to compel retirement on pension ; in the Secretary of State's view, it is only in exceptional circumstances that a coroner should continue in office until over the age of seventy, and the age of seventy-five should be the maximum.

"REALISM IN ROAD SAFETY"

[CONTRIBUTED]

The official statistics of road accidents for 1951 issued recently by the Ministry of Transport will, no doubt, be received with the usual degree of indifference by many persons in official positions. A cursory glance, a sigh, a thought that the figures must be taken for granted, and the facts will be filed until the same time next year.

Many of us, whether magistrates, police, or local government officials will, no doubt, be guilty of this unenlightened outlook beset as we are with other urgent problems.

But these recent figures, proving as they do staggering carnage on our roads, demand immediate and particular attention. We must realize that in 1951 on an average fourteen people were killed and 578 injured each *day* (throughout the year 5,250 were killed and 211,243 injured) which are the highest returns since the war. It is apparent that road safety demands the highest priority being, it is submitted, more urgent and a greater menace than even such social problems as juvenile delinquency, penal reform, or the prevention and detection of crime. People are now struck down on the roads so frequently that we are tolerating what is rapidly becoming a human holocaust.

It is surely time that we diverted our attention from the depraved to the decent, honest citizens who meet untimely death or dreadful injury often through no fault or neglect of their own. We must remedy the situation at once.

Apart from loss of life and bodily hurt the exorbitant cost of accidents to the community supports this plea for priority. To take one particular town, for example, the Chief Constable of Eastbourne points out in his annual report for 1951 that accidents within the borough throughout the year cost approximately £183,817. This figure is calculated by an authoritative and reliable means of assessment. Throughout the country as a whole the figure reached several millions.

This drain on national economy does, in fact, lend support to a proved means of preventing accidents which should be introduced forthwith. This is the "courtesy cop" scheme which commenced in Lancashire on April 1, 1938, and terminated at the outbreak of war. The idea of advising and warning minor motoring offenders resulted in not only a decided decrease in the number of road casualties but, because there were fewer accidents, reduced cost to the community. Had it been possible to continue the experiment throughout the whole of the country there is little doubt that we should not be confronted now with the present distressing situation.

In 1947, a Committee on Road Safety presented its final report to the Minister of Transport, and gave this significant opinion about the deterrent effect which increased mobile police patrols, giving appropriate advice and guidance, would have: "We set the highest store by the mobile police patrols. . . . We are convinced that the generous use of mobile patrols, well trained and directed, would secure a great reduction of road accidents. . . . We look forward to a very wide extension of the use of mobile patrols throughout the country as soon as possible" (para. 169).

Five years later and this expert advice has not been taken. Why? The shortage of police which was originally one reason cannot be fully substantiated now as many forces are near to their full authorized strengths. The need for national economy is still apparent and the cost of training additional police traffic officers and purchasing their vehicles would need careful consideration. But it must also be agreed that money invested in extra mobile patrols would reduce considerably the monetary cost of accidents to the state.

It is refreshing to note that Mr. Gurney Braithwaite, Parliamentary Secretary to the Ministry of Transport, is in favour of such a scheme, stating as he did in Parliament on February 21, 1952, in reply to a question concerning road safety. "This (the 'courtesy cop' idea) would be the biggest single step which could be taken towards reducing road casualties." He added that the need for economy in government expenditure would unfortunately restrict the funds which could be allowed toward road safety measures (*Weekly Hansard*, No. 208, p. 566).

Are not road casualties now so great, however, as to warrant generous sums being diverted by the government to the provision of extra mobile patrols? And has the reduced cost of accidents, which would consequently be noticed in 1952 and subsequent years, been fully considered?

We know that extra police on the roads are a certain means of accident prevention, therefore let us use them in an immediate crusade against our shocking casualty rate. A crusade which should be regarded as one of primary national importance.

Road safety can also be propagated in one particularly fruitful field, namely among our school children. Experience has shown that much can be achieved by teaching them the rudiments of the subject. In the past, tuition has mainly been undertaken by the police with useful results. Some forces, however, have regarded instruction to school children less seriously than others, also in various places the school teacher has resented what he regards as intrusion by the police upon his domain.

Is it not time that the Ministry of Education and local authorities took steps to see that special instruction in road safety is included in the syllabus of every school over which they have control? To make teachers fully proficient in the subject it should form part of their courses at the training colleges and universities. In addition to ensuring that road safety would thus be taught in detail, friction between the police and the teachers would be avoided.

Those who doubt if it would be advisable to exclude a little academic teaching from school syllabuses to make room for road safety instruction should realize that of the fourteen people killed on the roads each day last year, one in every five was a young child! The number of children injured was correspondingly bad. Of all the little ones who have been sacrificed to the slaughter of the roads many would have been saved had they been fully instructed in road safety. Must we not train the child to regard this subject as being equal in importance to the academic ones?

Finally, although education in road safety will be more effective than retribution, consideration must be given to introducing additional preventive legislation. This should be directed against the motorist whom the police, despite the advisory activity of their mobile patrols, have been compelled to prosecute for bad cases of dangerous or careless driving (ss. 11 and 12, Road Traffic Act, 1930).

Severe penalties in themselves have in the past been of little deterrent value, but nevertheless it is surely common sense that really bad drivers must be debarred from the roads, especially when one considers again our present casualty figures.

This could be achieved by legislation *obliging* the courts to disqualify the dangerous or careless motorist for a minimum period of at least one month even if it is his first conviction for such an offence. The disqualification should be absolute in the sense that it should not contain an option to obtain a provisional licence and pass a driving test, otherwise the official examiners would become overloaded.

The courts could, however, be empowered at their discretion to confine suspension to one type of vehicle only, and a " special reasons " clause could be attached. There would also be the usual right of appeal. These provisos would rebut any criticism of undue harshness in the legislation.

Whether the remedies suggested in this article are acceptable or not we must admit that our road casualty figures are a disgrace to a country whose humanitarian ideals have spread throughout the world. We should be ashamed that the figures quoted for 1951 emanate from Britain. It is clear that we must cast complacency and precedent to one side and tackle this vital national problem with determined and if necessary unorthodox action. We may then be able to declare truly that our roads are safe instead of sacrificial ! R.T.

BASTARDY PROCEEDINGS IN THE SEVENTEENTH CENTURY

By ERNEST W. PETTIFER

The recent report, a sound and thoughtful document, of the Joint Committee of the British Medical Association and the Magistrates' Association has emphasized the undoubted fact that the law concerning illegitimate children grew out of the poor law. It may be helpful to examine some of the early quarter sessions records and so obtain a clearer picture of judicial practice and opinion in a period not too long after the Act of 1576 (to which the Committee draw attention) had become established as the justices' guide in dealing with the numerous unwanted children whose future lay largely in the hands of the courts.

The following facts are taken from the proceedings of two of the Yorkshire Ridings, the West and the North. It will be observed that the practice adopted by each Riding differed very widely from that of its neighbouring quarter sessions, but the influence of the poor law, and a keen anxiety to ensure at all costs that the unfortunate babies should not become chargeable to the rates, are clearly seen in the minutes of each court. The facts are taken from three volumes, namely, volume 2 of the West Riding records, 1611 to 1642, and the North Riding volumes 1 and 2, covering the period 1605 to 1620.

The West Riding, as the larger in area and population, demands priority, and its minutes show that a large number of bastardy proceedings came before its sessions, which, it should be noted, were held in rotation at ten towns in the Riding in those days, presumably for greater convenience in travelling for the justices and the public.

It is clear that the justices firmly believed in the efficacy of flogging as a cure for moral lapses by the women : treatment of the men was more selective ! In one case, and one only, the man, as well as his guilty partner shared in the penalty. Both were sentenced to be stripped from the waist upwards and soundly whipped through the town of Wetherby.

At the same sessions (January, 1614) the man in another case did not appear, although a warrant had been previously issued for his arrest. The court, not to be baulked by this shyness on the part of the putative father, issued a fresh warrant. It included not only the name of the defaulter but also the name of Jo. Wright, constable of Spofforth, who had refused to execute the previous warrant. It is unfortunate that the records are silent as to the ultimate fate of the putative father and the erring constable. Possibly there was a General Gaol Delivery before the next sessions and they were haled from York Castle to appear before a Judge of Assize. The mother was dealt with on the spot, and endured the usual ignominious exhibition through Wetherby streets.

At Knaresborough (September, 1614) Thomas Faber and Jane Woodward were held to have committed " that most grievous sinne against the laws both devine and humane, and to the evil example of others." The baby was delivered to Thomas, while Jane was ordered to figure, on a market day, at Ripley, the parish constable assisting.

There was a dispute as to the paternity in the next case that day. John Benson of Ripon appeared (having been bound over so to do by the local justice) and strongly denied the allegations made by Jane Batty. He gave evidence on oath and was supported by one Thomas Lolley who swore that " he believed, on his conscience that one (blank) Danyell was the father." Backed by this curious testimony Benson was discharged from the case, but the unfortunate complainant received a double whipping for her " impudence and immorality," suffering first at Spofforth and then Knaresborough.

In 1631 a master and his maid servant were before the court. The woman escaped corporal punishment in this case, her late master having to pay £3 6*s*. 8*d*. to her within the next six months.

In none of these cases was any order made directly for the maintenance of the children concerned, but in later cases the West Riding Sessions made orders, the average amount being 8*d*. per child. These orders invariably ran for seven years, at which tender age the unfortunate children were to be apprenticed, a grim word which, it is to be feared, meant little less than slavery, and a cheerless future for the little boys and girls so disposed of. In one case a brother of the putative father had kept the child for seven years. He then brought the boy before the court and asked to be relieved of the responsibility. The court ordered the child to be apprenticed. In another case the justices ordered payment of a lump sum of £4 10*s*. 0*d*. and 10*s*. costs, but the mother was warned that, should the child become chargeable, she would be committed to Wakefield House of Correction. In 1640 a man was ordered to pay 10*d*. per week to the Churchwardens and overseers for the maintenance of the child of Elizabeth Reynard, but only for 1½ years, after which period he was to take the child. Reynard was sent to Wakefield for one year to be " corrected and punished."

Again in 1640 a woman sued, when her child was four years old, on the ground that she now needed help. The order of the court ran—5*s*. birth expenses, 6*d*. per week for the past four years and 10*d*. per week for the next three years unless the father choose to take the child himself. Justices resident in the district were asked to watch the case and, if necessary, to bind the man over if he defaulted. In many cases in which the father offered to take the child into his own home and maintain it, or was directed by the court so to do, there is no mention of any consideration being shown as to the wishes of the mother on the matter.

An Ackworth woman appeared at Barnsley Sessions in September, 1641, described as of lewd life and conversation, and who had already had two bastard children. An order of 8*d*. per week was made against the man, and the court, looking ahead, ordered that the child should be apprenticed at seven years. The woman was committed to Wakefield for a year and to find sureties for good behaviour. Whether she found sureties and was released during the next few weeks is not stated, but she appeared at the Pontefract Sessions in the following May,

when it was recorded that she refused to pay towards the maintenance of the child, and was committed to prison for a year.

One final case from the West Riding records—the custody of a child was given to the father, the mother being ordered to pay to him 2*d.* per week. The order contained a specific command to the man, a Sykehouse farmer, that he must " discharge and save harmless the inhabitants of Sykehouse from any charges."

Let us turn now to some cases which came before North Riding Sessions during the period chosen for examination (1605-20). It would be unjust, possibly, to say that the North Riding justices made less effort to keep within the law than their brethren of the West Riding, but the records certainly give the impression that there was a more free-and-easy interpretation of their powers. Thirsk Sessions, for instance, in 1605, made an order for 10*d.* per week, and £1 due to the nurse who had the child, but the order was directed to one Miles Danby who was not the father of the child, but rented land from the putative father. The mother was directed to find clothes for the baby. At the Richmond Sessions later, Danby, it was recorded, flatly refused to pay the amount, and the court, obviously conscious that it was not on very safe ground, made a new order on the parish of Thornton-le-Street.

In another case at Thirsk in 1612, the putative father had disappeared, but the court decided to ignore the trivial matter of his absence and proceeded to make an order upon his father-in-law, adding a clause to the effect that, if the father-in-law could find the son-in-law and take him before a justice to be bound over to appear, the order might cease. The fact that the father-in-law had been left with his own daughter and possibly a family on his hands by the disappearance of the son-in-law is not mentioned in the minute ; possibly the justices thought that the fact would make the father-in-law more active in his search for the missing member of the family.

At Richmond (1606) the court left to Sir Conyers Darcy, a justice, to decide whether Will Cook was the father of the child of Elizabeth Carter. If it appeared to him that Cook was the father the court (anticipating an affirmative decision) directed that the pair should be " carted " through Bedale market, Cook to keep the child thereafter, but the mother to keep it in the meantime.

The North Riding justices appear to have held very liberal views as to what constituted evidence. A minute of Richmond Sessions in 1608 makes curious reading. On the Bench that day was Mr. Adam Middleham. At a certain point in the proceedings Mr. Middleham stood up and informed his colleagues that " divers honest wives, who were at the travail and delivery of Elizabeth Massye, stated that she charged one Tristram Newstead of Wath, labourer, to be the father of the child." With this ample proof before them, and in the absence of the putative father, the court awarded 4*d.* a week to Elizabeth, and issued a warrant to bring Tristram to the next sessions. The warrant was duly executed, and, "for his misdemeanour in getting Elizabeth Massye with child," he was fined 15*s.*

In an earlier case (1607) at Helmsley, the miller of Brotherton, near Ferrybridge, after banns of marriage had been published three times, fled the county, leaving the prospective bride expecting a baby. The curate of Brotherton recounted these distressing facts to the quarter sessions by certificate, and the justices holding that " such like lewd persons shall not escape unpunished notwithstanding they flee into foreign countries or ridings " issued a warrant for his apprehension.

At Helmsley Sessions in 1608 a warrant was issued to apprehend a man accused of being the putative father of the child of Elizabeth Casse. Miss Casse being in court, and there being a dispute outstanding between her and John Marshall as to a tenancy the justices thought they might as well settle this little matter and so save time ! The official minute continues without a break after recording the issue of the warrant that she renouncing her tenancy, and being awarded the price of two sacks of oats sown on the land, the dispute ended happily. Coming back to a realization that this was really a bastardy case, in its early stage, the justices then bound over Miss Casse to be of good behaviour, and, presumably, to have no more bastard children.

In one case only is there a record of whipping being inflicted upon the mother of a bastard child. On this point the North Riding justices evidently did not see eye-to-eye with their brethren of the West Riding, but they used other punishments, as indeed, under 18 Eliz., c. 3, they had power to do, in addition to making orders. One pair were ordered to sit in the stocks for three hours, but in the main the justices relied upon a system of fines. These ranged from 15*s.* to £10. The £10 fines were allotted to H.M. the King ; some of the smaller amounts were split between the parish and the King. To ensure that fines were recovered the justices widely used their power to call upon those penalized to find sureties for payment of the amounts due. Sureties were also called for quite frequently from women given orders, to ensure that the children should not become chargeable. Sometimes the court anticipated the coming of collecting officers by some three centuries, and ordered that the moneys awarded should be paid through the overseers of the parish. A curious variation of this desire to have the money pass through the hands of a third person appears in a minute of Richmond Sessions (1608) recording that Thomas Duffield became surety for James Phillips that he or Phillips would pay 40*s.* to Jane Lumley " on Easter Wednesday next at the Church porch of Aynderby Steeple for the relief of a base child " of Jane Lumley.

Running away did not save reputed fathers in the North Riding. In one case an order was made for 1*s.* per week, the arrears to accrue, and a " warrant dormant " to await the return of the missing parent.

From these North Riding records, too, can be seen the beginnings of the powers of justices to act outside sessions. There are several instances in which the court delegated its power to decide a bastardy case to one, or two, justices in their home districts.

Amongst the many other cases of interest one only can be given. The proceedings began at Thirsk (1609) when it was recorded that an allegation had been made that Will Thompson reputed to be the father of the child yet to be born to Thomasin Clarke, had not only refused to accept the responsibility for its maintenance, but had threatened to kill Thomasin Clarke. A warrant was issued by the justices. At Malton, six months later, the justices were set a new problem, the origin of which is not stated. They were asked to state whether Thompson, or one George Wood, was the father of the child now born to Thomasin Clarke. From the previous entry it appeared that Miss Clarke accused Thompson. Possibly Thompson had named Wood as the putative father, and thus had brought him into the case. Although Thompson had, presumably, been named by the woman, the court decided that Wood was the father. Perhaps the justices felt that they knew better than the woman, but, whatever the reason for selecting him, Wood was ordered to pay 5*d.* per week. Two men, James Marshall and Robert Gryndon, who, it was stated, had wrongfully charged Thompson, were ordered to be brought before the court on warrant, but what befell them is not recorded.

Here we must leave the old records, but from the extracts

which have been given, we can draw to some extent a picture of one aspect of the social and judicial life of England nearly 350 years ago, and so obtain a background for the bastardy laws of today which are now coming under careful examination, and which will, it is to be hoped, be revised at some not far distant date.

POWER TO PROSECUTE

We published at p. 38, *ante*, an article entitled "Local Authorities: Authority to Institute Proceedings and to Appear." The writer of that article said: "For one thing a local authority must make individual decisions—there never can be a 'wholesale' decision to commence proceedings: *see Re Paddington and St. Marylebone Rent Tribunal; Ex parte Bell London and Provincial Properties, Ltd.* [1949] 1 All E.R. 720, and the *Shoreham Houseboats* case referred to in Mr. Megarry's article in the September *Journal of Planning Law*." We shall return to this passage. Our article was headed as "contributed," an indication that it did not necessarily express our own views, but in P.P. 15 and at p. 79 we did express a view of our own, making rather more precise in relation to a particular case what our contributor had written as a general proposition. The article and answer between them have roused much interest, and we are indebted to several correspondents who have given us their own opinions, some against us, some supporting us, and have *inter alia* informed us of a valuable opinion by experienced counsel which goes far to support our view as a general proposition, though in one matter we must admit the Divisional Court to have been against us.

To return, however, for the moment to the passage quoted above from the "contributed" article at p. 38. Commenting upon this, one of our subsequent correspondents points out that in *Re Paddington and St. Marylebone Rent Tribunal* the King's Bench Division merely decided that a local authority could not refer a whole block of flats to a rent tribunal, without a proper investigation of the circumstances of the individual tenancies. Moreover, it is noteworthy that the reference was not made by an official acting under a general authority, but was made on the express instructions of the deliberative body itself. As regards the *Shoreham* case, of which we gather there is not any full report available, there is a statement by Mr. Megarry that "No doubt, it would be improper for the local planning authority to make a general delegation of authority to the clerk to serve enforcement notices, *e.g.*, in any cases in which he thinks fit, or upon any contravention appearing to him to have taken place." on the other hand he states in relation to s. 23 of the Town and Country Planning Act, 1947: "A common sense reading of this provision suggests that the local planning authority must indeed have in mind particular infringements on particular areas of land, but that, having decided that enforcement action should be taken, the authority can direct the clerk to serve enforcement notices on all offending owners and occupiers within that area, without considering the notices *seriatim*." We agree that the *Paddington Tribunal* case does not lend much support to the proposition that a general authority cannot be given to an official to select cases for prosecution. Mr. Megarry's opinion, just given, does however lend some support at least for, in this instance (s. 23 of the Town and Country Planning Act, 1947) he envisages the council or committee actually considering a whole area, and then directing the official to serve notices on all owners and occupiers within that area, though it does not pause to ascertain who they all are.

Several of our recent correspondents draw attention to the decision in *Tyler* v. *Ferris* (1906) 70 J.P. 88, which turned upon the word "consent" in s. 14 of the Weights and Measures Act, 1904. It was apparently conceded by counsel for the defendant that if the proceedings had depended entirely upon s. 259 of the Public Health Act, 1875, it would have been possible for the local authority to give a general power to its inspector not merely to lay an information but to decide in what cases an information should be laid.

Counsel endeavoured to argue that the requirement of "consent" in s. 14 of the Act of 1904 involved something further, and that *ad hoc* consent was required in each case. The Divisional Court headed by Lord Alverstone, C.J., dismissed this argument quite briefly, and apparently regarded it as the "usual practice" for a general power to select cases for prosecution to be conferred upon local authority officials. However this may have been in 1906, we had supposed that when the Local Government Act, 1933, was passed Parliament intended to draw a distinction between authority to lay the information, which can be general for all cases within the official's sphere of duty, and authority to select cases in which an information is to be laid, *i.e.*, that this second matter could only be decided by the local authority or by a committee to which the function has been delegated in due form. We expressed this opinion categorically in answering a P.P. at 103 J.P.N. 673 (and, we may remark, did not then receive any protests or letters of dissent from readers). The opinion was, in part, based upon *Thorpe* v. *Priestnall* [1897] 1 Q.B. 159; 60 J.P. 821, and in part upon *Bowyer, Philpott, and Payne, Ltd.* v. *Mather* [1919] 1 K.B. 419; 83 J.P. 50, where the editorial headnote used the phrase now occurring in s. 277 of the Act of 1933, *viz.*, "institute proceedings," as a translation of the language of s. 259 of the Public Health Act, 1875, where that phrase did not occur, and Darling, J., in the leading judgment, seems to us to be thinking of the laying of an information, rather than the prior decision so to do. We do not think *Tyler* v. *Ferris*, *supra*, at all events, impugns our general proposition. Nobody, we may say in passing, has impugned one thing we said in our answer to P.P. 15 at p. 79, *viz.* that it is the duty of the court to be satisfied that the official who prosecutes has proper authority, in any case to which s. 277 of the Act of 1933 applies. The only question is, what amounts to such "proper authority." In the case with which we were then concerned the note made and initialled by the chairman of the committee was not authority to anybody to do anything. It purported to be a mere submission, upon which the committee itself was to decide. If, however, an official already possessed, under instructions of the council, or under instructions of the committee exercising delegated functions, a general power to select cases in which to lay an information, he could do so irrespective of what the chairman wrote on the papers—although as between him and his employers that which the chairman wrote was no doubt some safeguard to him. If he did not possess such a general power to select cases for the laying of an information, that which the chairman wrote did not carry matters any further, and this was the real point which the local authority submitted to us.

Our answer was, however, dealing with a prosecution under the Food and Drugs Act, 1938, and we are obliged, in face of *James* v. *Stein* (1946) 110 J.P. 276, to withdraw what we said in the middle of that answer, *viz.*: "If the authorization is for all proceedings of a particular class (as we gather may have been given by this counsel to the sampling officer) then each separate prosecution to be undertaken by him must be specifically authorized by the council or by a committee."

It is true that in that case the Divisional Court was asked to say whether the general authority to prosecute given by the county council to its inspector included the power to decide whether it was proper or not to prosecute the manufacturer or wholesaler under s. 83 (3) of the Food and Drugs Act, 1938; but Lord Goddard, C.J., was of the opinion that the authority, in the form in which it was given, empowered the inspector to decide whether a prosecution should take place or not. He said, on p. 280: "We must give a reasonable and sensible meaning to s. 277 of the Local Government Act, 1933, and to the authority which pursuant to that section, the county council conferred on the appellant. If we come to any other decision, it would mean that nobody could be prosecuted by the appellant for any offence under this Act, so far as I can understand it, except where he had got the specific authority of the county council in each case to prosecute. . . . If we are to limit those words by holding that he can only prosecute a particular person whom the county council has decided to prosecute, it means that every case would have to go before the county council to be considered, and I should imagine that the county council of Huntingdonshire would have to be in continuous session. Obviously we must give a reasonable construction to this authority as well as to the Act."

Now, with all respect to the Lord Chief Justice, we cannot endorse the argument from supposed practical necessity in the foregoing lines. The practical difficulty indicated in his judgment need not arise. The Act of 1933 gave a local authority full power to delegate to committees, which could only be done to a limited extent before that Act was passed. The council can even delegate the duty of selecting cases for prosecution to a committee of two members or can, while delegating its general functions under a particular Act to one of its main committees, specifically authorize that main committee to delegate further the power of selecting cases for prosecution. If the main committee is thus authorized by the parent local authority to sub-delegate, the maxim *delegatus non potest delegare* will not apply. There is another argument from convenience made by some of our correspondents, with particular reference to prosecutions under the Food and Drugs Act, 1938. This is that the obtaining of specific authority to prosecute might be difficult, by reason of the short time allowed by s. 80 (1) of that Act; the limit of the twenty-eight days may have almost expired before the analyst's certificate becomes available. One correspondent says it often takes three weeks of the four. We should have thought this could be got over, either by delegation to a small committee meeting frequently of the decisions whether to prosecute, or by the appropriate committee's authorizing the official, after the committee has considered the case, "to prosecute Messrs. Roe and Doe if the analyst's certificate is in terms which the council's solicitor advises will support the prosecution."

This may be a convenient point at which to notice another point made against our general view by the solicitor to a large local authority. He truly says that it is a common law principle that where an offence is not an individual grievance but is a matter of public policy and utility, or concerns the public morals, any person has a general power to inform (and sue for the penalties, if penalties there be) unless the statute creating the offence contains, as does s. 253 of the Public Health Act, 1875, or s. 298 of the Public Health Act, 1936, some restriction limiting the right to some particular person or party: *per* Cockburn, C.J., in *Cole* v. *Coulton* (1860) 24 J.P. 596. The same can be said of prosecutions under s. 72 of the Highway Act, 1835, and under the Merchandise Marks Acts. There are others where the local authority is not specifically required to reach a decision and where a private individual may lay the information, such as offences under the Rag Flock and Other Filling Materials Act, 1951, and breaches of some byelaws, *e.g.*, those made under s. 249 of the Local Government Act, 1933. In these cases an officer of a local authority could presumably lay the information without authorization, under the rule laid down in *Smith* v. *Dear* (1903) 67 J.P. 244, namely that any person may prosecute under a penal statute unless it contains some limitation.

The cases we are now considering are however not those of a private person laying an information, at his own peril as to costs. One point, though not the whole point, of the present article; of ss. 253 and 259 of the Public Health Act (1875 for example); of s. 298 of the Public Health Act, 1936, and—we had thought—of s. 277 of the Local Government Act, 1933, is that, where an official lays the information costs will be incurred which, except to the extent that they are ordered to be paid by the defendant, will if properly authorized fall upon the public.

However, the decision in *James* v. *Stein*, *supra*, is authority for saying that our view of the law is too narrow, at least as regards the Food and Drugs Act, 1938, and similar Acts. The decision of the Divisional Court in that case cannot now be overruled except by Parliament; according to that decision s. 277 of the Act of 1933 entitles a local authority to delegate, even to an official, the right of selecting cases for prosecution under statutes not containing any other limitation. Where the statute says (so far as here relevant) that proceedings may be taken by the local authority and by them alone, we greatly doubt whether the decision to prosecute can be entrusted to an officer or to a single member: we think there must be delegation to a committee of at least two members. This seems to be good sense, and to be consonant with *Jones* v. *Wilson* (1918) 82 J.P. 277—though admittedly that case was decided upon a statutory provision rather outside the ordinary run of such provisions. When such a provision is applicable, we still prefer to regard s. 277 of the Local Government Act, 1933, as primarily a "machinery" section, related only to the method of getting the prosecution started. One learned correspondent asks us why, upon this view, s. 277 should have authorized a local authority to pass a resolution enabling an officer either generally or in respect of any particular matter to institute proceedings on their behalf; he wonders what is the necessity of providing for the giving of authority "generally," as distinct from "a particular matter," unless it be to enable proceedings to be taken without reference back to the council or committee. Our answer to this is that a council may authorize the sanitary inspector (for example) to institute proceedings (which we still prefer when possible to interpret as meaning "to lay an information") in all cases where the public health committee has decided that a person shall be prosecuted—thus making it unnecessary for the council or committee, whenever it directs a prosecution, to direct further which official is to lay the information. (The giving of such a specific direction, as to the official who shall lay the information, proved embarrassing in the recent case of *Hornchurch U.D.C* v. *Brazier* (1952) (not yet reported) where the clerk and deputy clerk held general authorizations. In the particular case the council or committee, perhaps by inadvertence, directed the clerk to lay the information and, when the deputy clerk did so, it was held that his general authorization had been overridden.)

One correspondent argues that prosecuting is but one step in enforcement; inspection, report, and the ultimate decision by the magistrates are but successive steps, linked together by a prosecution. Though this is true in one sense, the prosecution is a step of a special sort. Even if the defendant be acquitted, the prosecution may be damaging to his reputation and his pocket, while it will, in greater or less degree, place some charge upon the ratepayer. In *Bowyer, Philpott and Payne, Ltd., supra*, the

Divisional Court pointed out that the official might not be in a position himself to satisfy an order for costs. Thus there are two separate financial interests to protect, that of the successful defendant and that of the ratepayer. As a matter of practice, therefore, notwithstanding the facility for entrusting power to an official which the Divisional Court in *James* v. *Stein*, *supra*, said was given by s. 277 of the Act of 1933, the giving of such a general power to prosecute does not strike as us sound, unless specific statutory power has been conferred upon the official. Not only may prosecution involve the local authority in liability for costs; more important, on the natural reading of s. 277 of the Act of 1933, especially where it has to be worked with such sections as s. 253 of the Act of 1875 and s. 298 of the Act of 1936, it seems to us that one purpose of this sort of legislation is (in local government affairs) to give to the potential defendant a protection comparable to the protection given in other matters by requiring the consent of the Attorney-General to an indictment, or enacting that prosecutions are not to be undertaken except by the Director of Public Prosecutions.

We remain therefore of the opinion, notwithstanding *James* v. *Stein*, *supra*, that the sounder practice is for the decision whether the law ought not to be set in motion in a particular case to be taken by persons responsible to the electorate.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

MAINTENANCE ORDERS

At question time in the Commons, Mr. Hector Hughes (Aberdeen North) asked the Secretary of State for Scotland whether he would take steps to provide means whereby a Scottish wife deserted by her husband could obtain in Scotland a maintenance order enforceable in British Dominions, Colonies and foreign countries.

The Secretary of State for Scotland, Mr. James Stuart, replied that, as he had explained to Mr. Hughes in a recent letter, there were formidable difficulties in the way of making reciprocal arrangements between Scotland and countries of the Commonwealth overseas for the making and enforcement of maintenance orders. Even greater difficulties would have to be overcome before such arrangements could be made between Scotland and foreign countries. He was afraid he could hold out no hope of early legislation on the subject.

Mr. Hughes: "Is the Minister aware that great suffering and injustice is being done by the absence of any such provision? Surely he will take some steps to try to obviate that suffering and injustice?"

Mr. Stuart: "I certainly wish to do so, but there are grave difficulties."

CHILD ADOPTION

Mr. George Craddock (Bradford S.) asked the Secretary of State for the Home Department whether he would introduce legislation to cover all adopted children and so prevent the large number of private arrangements made annually without any regulations at all.

The Secretary of State for the Home Department, Sir D. Maxwell Fyfe, replied that he understood that Mr. Craddock had in mind prospective adoptions arranged by private agents. The law put a duty on such agents to notify the welfare authority seven days before possession was taken of the child and provided that the child should then be under the supervision of the authority. In addition, the court, before making an adoption order, had to satisfy itself by inquiry that the order would be for the welfare of the child.

ILLEGITIMATE CHILDREN

Mr. John Parker (Dagenham) asked the Prime Minister whether he would recommend such alteration of the terms of reference of the Royal Commission now sitting on Marriage and Divorce as to enable them also to consider and report on the present laws about illegitimate children.

Mr. Churchill replied that he was advised that it would not be desirable to extend the terms of reference of the Royal Commission on Marriage and Divorce in the way suggested. The Commission already had a great deal of work to do and the law relating to illegitimate children was complicated and had better be studied separately in the light of the Royal Commission's recommendations on the aspects of family life which had already been referred to it.

ILL-TREATMENT OF ANIMALS

Mr. Donald Chapman (Northfield) asked the Secretary of State for the Home Department how many successful prosecutions for ill-treatment of domestic animals were made in 1951, or the latest convenient period of one year; whether his attention had been called to the number of additional warnings issued to offenders by the Royal Society for the Prevention of Cruelty to Animals; and whether he would draw the attention of magistrates to their powers of imprisonment in cases of proved ill-treatment.

The Secretary of State replied that the criminal statistics did not distinguish between offences of ill-treatment of domestic and other animals. During the twelve months ended September 30, 1951, 1,012 persons were charged with offences of ill-treatment, of whom 869 were convicted. Twenty-six of them were sentenced to imprisonment. He had no reason to think that magistrates were unaware of their powers.

He added that he had no knowledge of the circumstances in which warnings were given by the R.S.P.C.A. to persons who were not charged with an offence.

Mr. Chapman: "Is the Home Secretary aware that the R.S.P.C.A. is now issuing, every year, something like 11,000 oral warnings, in addition to many other kinds of warning to people who ill-treat animals? Is he further aware that a man who beats a dog to death with a crowbar is fined a miserable £7? Is he satisfied that the magistrates are really using their powers of imprisonment to try to stamp out this sadism in our national life?"

Sir D. Maxwell Fyfe: "I have no reason to think that magistrates are unaware of their powers. I should also like to say that I am not going to be a party to the Executive giving directions to magistrates as to how they should do their work. I think that magistrates, who have the whole facts of each case before them, can best decide the appropriate penalty. Much as I regret the existence of these offences, I am not going to depart from that principle. On the other hand, the raising of the point and the obvious unanimity of feeling against these offences will go out from this House to the country."

Miss Irene Ward (Tynemouth) said that as a magistrate she thought the maximum sentences which could be imposed were too light and should be raised.

Sir David said he would note that remark.

Mr. Chapman gave notice that, in view of the unsatisfactory nature of the reply, he would raise the matter again on the Adjournment.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Tuesday, March 11

INDUSTRIAL AND PROVIDENT SOCIETIES (NO. 1) BILL, read 2a.
CINEMATOGRAPH BILL, read 3a.
JUDICIAL OFFICES (SALARIES, ETC.) BILL, read 3a.

Wednesday, March 12

AGRICULTURE (FERTILIZERS) BILL, read 2a.
MERCHANT SHIPPING BILL, read 3a.

Thursday, March 13

MOTOR VEHICLES (INTERNATIONAL CIRCULATION) BILL, read 2a.

HOUSE OF COMMONS

Friday, March 14

POST OFFICE AND TELEGRAPH (MONEY) BILL, read 1a.
HEATING APPLIANCES (FIREGUARDS) BILL, read 2a.

PRONUNCIATION

Is he the sort
To be an executor *de sort* tort—
Or if that's a pronunciation you deplore
An executor *de son* tort?

J.P.C.

MISCELLANEOUS INFORMATION

CHANGES IN THE PROCEDURE FOR APPLYING FOR AND GRANTING LEGAL AID

Changes in the procedure for applying for and granting legal aid in criminal cases will take effect on April 1, 1952, when subss. (1) and (3) of s. 18 and ss. 19 and 20 of the Legal Aid and Advice Act, 1949, come into force.

The main effect of these provisions will be, first, to give statutory effect to the existing practice of resolving in the applicant's favour any doubt that may exist whether his means are sufficient or whether it is desirable in the interests of justice that he shall have free legal aid.

Secondly, an applicant for free legal aid may in future be required to furnish a written statement about his means to enable the court to decide whether to grant him free legal aid. The form of statement is prescribed by the Legal Aid in Criminal Cases (Statement of Means) Regulations, 1952. There is a penalty of £100 or imprisonment up to four months for knowingly making false statements.

Thirdly, persons who at present can apply for legal aid only when they are in court will in future be allowed to apply by letter. A person has been summoned or arrested may apply by letter even though he has not yet appeared before the court.

ROAD ACCIDENTS—DECEMBER, 1951.

Casualties on the roads in December, although fewer than in November, were the heaviest recorded in this month for ten years. The total was 18,187, including 521 killed and 4,578 seriously injured.

Over one sixth of the casualties occurred on the last four week days before Christmas, when 3,226 persons were injured, 101 fatally. Casualties reached their peak on Christmas Eve with a total for this one day of 1,065, including twenty-four killed.

The total for the month was 2,425 more than in December, 1950, when, however, bad weather kept much traffic off the roads and casualties were exceptionally low. The chief increases, compared with December, 1950, were: motor cyclists by 907 to 2,497; child pedestrians by 483 to 1,717; adult pedestrians by 768 to 4,036; child pedal cyclists by 187 to 405; adult pedal cyclists by 576 to 2,694.

Casualties in 1951, the first complete year since petrol rationing was abolished, totalled 216,493, including 5,250 killed and 52,369 seriously injured. In 1950, when there were seven months without petrol restrictions, the killed numbered 5,012, seriously injured 48,652, and slightly injured 147,661, making a total of 201,325. The 1951 total was, however, 16,866 less than in 1938, when casualties totalled 233,359, including 6,648 killed.

PERSONALIA

APPOINTMENTS

Mr. A. J. Campbell has been appointed custodian of enemy property for England in the place of Mr. C. A. Slatford.

Mr. A. R. C. Kirtlan, assistant registrar in the Birmingham county court and district registry, has been appointed registrar for the county courts of Wellington, Whitchurch and Shrewsbury.

OBITUARY

Mr. Maurice Pembroke FitzGerald, Q.C., died in London on March 13. He had been a deputy chairman of Essex quarter sessions since 1943. Called to the Bar by the Inner Temple in 1912, he practised on the South Eastern Circuit. He took silk in 1938 and became a Bencher of the Inner Temple in 1945.

Mr. C. Eric Staddon, O.B.E., died at Beckenham on March 7. He had recently tendered his resignation as town clerk of the borough of Beckenham, owing to continued ill health. Mr. Staddon was appointed clerk and solicitor to the then Beckenham U.D.C. in 1930. Prior to that date he was clerk and solicitor to the Wood Green U.D.C. He subsequently became charter town clerk of Beckenham in 1935 and first town clerk of the borough. During World War II he was controller of the Beckenham civil defence services and was awarded the O.B.E. in 1945.

Mr. F. C. Hollowell died recently at Brightwell-cum-Sotwell at the age of sixty-seven. In 1921 he became borough accountant of the Wallingford borough council and until 1947 he was principal assistant to the magistrates' clerk of the borough and the Moreton courts. He retired in 1949.

NOTICES

The next court of quarter sessions for the borough of Guildford will be held on Saturday, March 29, 1952, at 11 *a.m.*

The next court of quarter sessions for the Isle of Ely will be held on April 2, at Ely.

The next court of quarter sessions for the borough of Grantham will be held on Wednesday, April 16.

REVIEWS

The Law of Public Cleansing. By J. F. Garner. London: Shaw & Sons Ltd. Price 27s. 6d. net.

The publishers state that this is the first book upon its subject. It is a companion volume to the *Law of Sewers and Drains* by the same author, who is town clerk of Andover. It falls, naturally, into such headings as the removal of refuse from premises, other domestic cleansing services for which local authorities are responsible, street cleansing, the disposal of refuse, and so forth. Each of these is adequately, though briefly, dealt with. Possibly the work will not add much to the knowledge possessed by senior municipal officials, but it should be useful to cleansing superintendents and their staffs, and to solicitors who may be called upon unexpectedly to advise householders concerning the manner in which the law of cleansing affects their rights or obligations. There is, for example, the perennial topic of the duty to provide a dustbin, and there are various other matters about which the ordinary householder is ignorant, and the solicitor called upon to advise him in a hurry may not be sure where to turn for information. The book runs only to 126 pages, but, within this small compass, each of the topics to which it relates is dealt with briefly but adequately. There are ample references to case law and to the relevant statutory provisions, with copies of model byelaws and sections of the Public Health Act, 1936, and other Acts. It is a work which should be quite useful within its own limited sphere.

Central and Local Government Financial and Administrative Relations. By D. N. Chester. London: Macmillan & Co. Ltd. Price 30s. net.

Mr. Chester is an Official Fellow of Nuffield College, Oxford, and known to many people in the local government world as an investigator into the practical working of their mysteries. It is a little startling to persons not familiar with these matters to discover that a catalogue, of the present grants alone, covers twenty-five pages. There is also a detailed exposition of the method of the General Exchequer Grants—a matter which it is by no means easy to explain to foreign students, or to others who do not from day to day have to work upon the subject. The book is full of interesting sidelights upon local government, such as the relation between educational grants and staggered holidays, or the curious history of raids upon the Road Fund by Chancellors of the Exchequer. Given an appreciation of Mr. Chester's bias, about which he is frank, this book will prove extremely valuable. It is perhaps the most readily comprehensible attempt yet made, to compress into manageable compass an explanation of the difficult and complicated topic of the relation between central and local governments, as affected particularly by the system of Exchequer grants, and we think it deserves more ample examination (which we hope to give it in a week or two), than can conveniently be compressed into this review.

A Guide to Rating Practice and Procedure. By Percy Lamb. London: The Estates Gazette, Ltd. Price 9s. 6d. net.

The learned author of this small work, who is recorder of Rochester, has set out to state the central rules of his subject without trimmings. It is a subject in which many of the headings are inevitable, such as "who is to be rated," "what is to be rated," and "who is an occupier." What is new, and much needed at the present time, is the summary treatment of procedure in the Local Valuation Court and before the Lands Tribunal. In each of his chapters Mr. Lamb has, so far as possible, confined himself to extracts from the judgments in the most important cases and, where there is no sufficient body of case law, given very short extracts from the statutes, or a condensed statement of their effect. The work does not pretend to compete with those of the class of *Ryde on Rating*, or even the smaller but invaluable Mackenzie's *Rating and Valuation Officer's Handbook*. It is nothing but a collection of brief statements, but these are so arranged, and so well selected, that we can see its having practical value, both to rating officers and valuers and to the legal advisers of rating authorities and ratepayers.

Your Family and the Law. By Robert S. W. Pollard. London : C. A. Watts and Co., Ltd. Price 1s. net.

This is one of the "Thrift Book" series, and it is quite a remarkable shilling's worth. The author has managed to compress into this little book a vast amount of useful information dealing with the family from all points of view. He starts with marriage, or to be more precise, with engagement, and goes through the various stages of family life right up to death and the proving of wills. The breakdown of family life, and questions of divorce, separation and the custody of children are all considered and dealt with simply and practically.

Children come in for a good deal of attention, and there is up to date information about adoption, illegitimacy, delinquency and the proceedings of juvenile courts. We notice that on p. 37 it is stated that a juvenile court may try a child or young person for any offence except murder; what ss. 10 and 11 of the Summary Jurisdiction Act, 1879, say is any offence other than homicide, which is not quite the same thing. Even in this context the statement "an indictable offence is a serious criminal offence which can be tried only at quarter sessions, assizes, or the Old Bailey," seems hardly adequate. Again, the bare statement "a wife's adultery entitles the husband to have the order discharged" on p. 62 needs qualification in view of the proviso to s. 7 of the Summary Jurisdiction (Married Women) Act, 1895. These, however, are small matters compared with the accuracy and general excellence of the work, which deserves to enjoy a large sale.

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 26.

A BOY SERVED DRINKS IN A BAR

The licensee of a Stockport public house appeared last month before the local justices, charged with employing his son, a boy under eighteen years of age, in the bar of his hotel, contrary to s. 30, Licensing Act, 1949.

For the prosecution, evidence was given that the boy was asked by his father to draw three glasses of beer at a time when the father was busy.

The defendant, who pleaded not guilty, gave evidence that his son had just "popped his head in the bar to say goodnight." It was four minutes before closing time and he asked the lad to draw three glasses of beer because he was busy. The defending solicitor submitted that the case should be dismissed on the ground that there was no relationship of master and servant. It would, said defending solicitor, be nonsense to suggest that if a woman asked her daughter to dust the sideboard for her, the mother could be said to be employing the girl and he urged that the position in the present case was the same.

The Bench decided to convict and imposed a fine of £2.

COMMENT

Section 30 of the Licensing Act, 1949, was one of the sections which caused much dissatisfaction to the trade when the Bill was going through the Commons. Retailers everywhere bitterly resented the section, but their spokesmen in the House failed lamentably to make their point and so the section duly became law.

There are clearly two viewpoints, each of which is entitled to respect —but unfortunately they are diametrically opposed. On the one hand what is more natural than that a father, rightly proud of his calling, should desire to give his son or his daughter practical experience in the running of a public house; it is true that there is nothing to prevent the youth or girl under eighteen learning cellar work—a vitally important part of the business—but experience in the bars is equally necessary, and up to 1950 it was gained by youngsters assisting their parents in the manner indicated in the case reported above. In this manner, young men of twenty-one were found to be perfectly competent to take charge of small public houses, for although young in years they were mature in experience.

The other point of view is held by those who *bona fide* believe that the atmosphere in public houses tends to corrupt, and who are therefore anxious to preserve from temptation youths and girls of impressionable age. If the atmosphere was in fact detrimental to good character, every right thinking person would support the provision of s. 30, but the writer doubts whether those who are always most ready to condemn the public house have, in fact, recent practical experience of them. Too many people, particularly the middle aged and elderly, confuse the public house of today with the gin palace of forty-fifty years ago. There is in fact no similarity whatever.

Section 30 provides for a maximum penalty of £5 upon a first conviction and £20 for a second or subsequent offence. By s. 42 (2) of the Act it is enacted that a second conviction must be within five years if a defaulter is to be subjected to the increased penalty.

Section 30 (4) contains a provision which may hereafter cause magistrates considerable thought. To get over the difficulty in which the prosecution might find itself if the precise age of the youthful assistant is not known it is laid down that where it appears to the court that the assistant is under eighteen, he shall be deemed to have been under that age at the time of the alleged offence, unless the contrary is shown. It is clear from this wording that the onus is only to shift from the shoulders of the prosecution to those of the defence when the court is satisfied that the assistant looks less than eighteen. The writer does not envy magistrates in this task, particularly when the assistant is a female !

No. 27.

A DISHONEST DAIRY FARMER

A dairy farmer appeared before the West Penwith Magistrates sitting at Penzance on February 20, 1952, to answer two charges, each alleging a contravention of s. 3 of the Food and Drugs Act, 1938.

For the prosecution, evidence was given that on a day in January, a Cornwall county council sampling officer was taking samples of milk, when he saw a car driven by defendant approaching him, and he noticed that there was a large churn on the rear carrier. As soon as defendant saw the sampling officer he accelerated and disappeared, but after an hour's search, the sampling officer found him again. He saw defendant get out of his car and walk across the road carrying a hand-can, which was obviously full of milk because some spilled over the top. Defendant disappeared behind a house and later returned still carrying the small hand-can. The sampling officer asked for a sample, but defendant pointed out that the can was empty and said that the officer would have to take the milk from the large churn on the back of the car. The sample was taken and later reported genuine by the public analyst. The defendant told the sampling officer he had finished his round and was returning home but an hour later the sampling officer saw defendant at another house. He asked him for his hand-can whereupon defendant replied it was at the rear of the house and there was nothing in it. He then ran around to the rear and while he was doing so, the sampling officer saw that the hand-can had been dropped into one of the flower beds. Defendant, on returning, exclaimed that the can was not there and that he did not know what had happened to it. The sampling officer drew his attention to its position, and defendant then said he knew nothing about this milk; it was some he had just bought. Defendant was asked for a sample, and after some hesitation he gave the officer he required quantity of milk from the hand-can. This sample was certified by the public analyst to contain twenty-five *per cent.* added water. The defendant very reluctantly disclosed the name of the supplier. A sample obtained the following day from the supplier proved to be genuine milk. The sampling officer then looked inside the car and saw an earthenware jug, in which was a quantity of water. Defendant stated that this was used to refill his radiator which leaked.

The sampling officer then went to a house where the defendant had delivered milk, and with the occupier's co-operation, took a sample. This milk on analysis was found also to contain twenty-five *per cent.* added water.

Defendant did not appear in court, but defending solicitor stated that the defendant pleaded guilty. He further stated that the radiator of the defendant's car leaked and that the jug of water was kept to replenish it. Some time ago, defendant had had a previous conviction for a similar offence and when he saw the officer he foolishly tried to avoid detection, but in doing so, only succeeded in involving himself in a mass of prevarication.

The Bench stated that they could find nothing to justify the defendant's non-appearance in court, and as for the explanation given on his behalf, frankly they did not believe it. It was a very serious charge and they were determined to stop that kind of practice as far as they were able.

Defendant was fined £100, that is £50 on each charge, and £8 10*s.* costs, with an alternative of three months' imprisonment.

COMMENT

Section 3 of the Food and Drugs Act, 1938, under which so many prosecutions are launched, prohibits the sale to the purchaser of any food which is not of, *inter alia*, the quality of the food demanded by the purchaser, and s. 79 provides for a maximum penalty of £20 upon a first offence and three months' imprisonment and a fine of £100 upon a subsequent conviction.

Milk receives more attention in the Act than any other single item of food or drink and, as is well known, the provisions of the Act as to milk have been supplemented by various regulations.

The Sale of Milk Regulations at present in force provide that where a sample of milk contains less than three *per cent.* of milk-fat or less than 8.5 *per cent.* of milk-solids, other than milk-fat, a rebuttable presumption is raised that the milk is not genuine by reason of the abstraction therefrom of milk-fat or milk-solids as the case may be, or the addition thereto of water.

(The writer is indebted to Mr. K. R. C. Martin, chief inspector, Weights and Measures Department, Cornwall County Council, for information in regard to this case.) R.L.H.

PENALTIES

Woodstock—February, 1952—disorderly conduct on a public service vehicle—fined £2. As a result of an argument with another man on a bus the other man's head was knocked through the bus window.

Tipton—February, 1952—(1) no policy of insurance, (2) no "L" plates, (3) no one accompanying learner-driver, (4) no driving licence—fined a total of £5. Disqualified from driving for twelve months.

Bath—February, 1952—preparing, invoicing and dispatching imported meat to sell at prices exceeding the maximum (sixty-one charges)—first charge fined £100 and to pay £5 15*s.* costs. Remaining charges absolute discharge. Defendants, multiple butchers with over one million registered customers, pleaded pressure of work and confusion between imported and home grown meat.

Sedgley—February, 1952—parking a motor lorry in a position likely to cause danger—fined £1.

Oxford—February, 1952—(1) no "L" plates, (2) not being accompanied by a fully qualified driver—(1) fined 15*s.*, (2) fined 10*s.*

Oxford—February, 1952—(1) aiding and abetting the first offence above, (2) permitting the second offence above—(1) fined 20*s.*, (2) fined 20*s.*

Bridlington—February, 1952—buying and being in possession of 103*lb.* of unlicensed pork (two charges)—fined a total of £30 and to pay £10 10*s.* costs. Defendant, a butcher, stated that he wanted to make each of his customers a pork pie for Christmas. It was not a profit-making transaction. Nine pounds of pork was condemned as unfit for human consumption.

Old Bailey—March, 1952—(1) wounding with intent to cause grievous bodily harm, (2) dangerous driving—(1) fined £250, (2) fined £25. Driving licence suspended for twelve months. Defendant, a forty-five year old company director, attacked with a heavy steel case opener, a co-director who was about to take a female employee of the company to her home in a car. He struck the co-director a violent blow on the top of his head felling him.

Yeovil—March, 1952—neglecting five out of eleven children (two defendants)—wife sentenced to three months' imprisonment; husband one month's imprisonment. After eviction from a council house the family went to live in a single bedroom 8*ft.* 8*in.* by 7*ft.* 7*in.* The mother slept in a single bed with four girls and the father slept on a mattress on the floor with his son. No bed-clothes were used, vermin were present and the children were dirty and unkempt. Offers of accommodation in a county council home were refused many times.

Bristol—March, 1952—stealing a raincoat and skirt—fined £25. Defendant, a woman of thirty-nine, who had £46 in her possession when arrested, asked for thirteen other cases to be taken into consideration involving ten handbags, twenty pairs of socks, etc.

CONFLICT OF LAWS

"If this were played upon a stage now," says Fabian in *Twelfth Night*, "I could condemn it as an improbable fiction." Many a lawyer has given utterance to a similar sentiment on being confronted, in real life, with a set of facts which sound as if they had been invented *ad hoc* for the plaguing of students in the examination-room. Truth, the proverb warns us, is stranger than fiction—and often, the experienced practitioner might add, infinitely more complicated.

In no branch of legal practice is this so true as in the application of the rules of private international law. The fascinating thing about such problems is that, in this department, the law is far from settled; learned judges and even law lords differ on a wide variety of questions, and their judgments and opinions are severely criticized by academic jurists and erudite writers of textbooks. And throughout the leading cases one is struck by the picturesque variety of names, countries and legal systems, which run through the geographical gamut from China to Peru.

One such case was recently before the learned judge at Westminster County Court, where judgment was given for the defendant in an action for alleged breach of contract. The *dramatis personae* were a German lady artist, an Englishwoman professing the Moslem faith, a Hungarian cook and two Pekingese dogs.

At the very outset the case was complicated by two diametrically opposed versions of the facts. The artist alleged that she persuaded the English lady to allow her to paint the dogs' portrait for a fee of £10 10*s.* She had, she said, "succeeded in painting the whole of the dogs, except the faces." At this stage, she complained, the alleged contract was repudiated by the English lady, who refused to allow her to complete the work. And the plaintiff claimed damages for the breach.

Pausing here, at the close of the plaintiff's case, several interesting issues emerge, few of which appear to have been seriously argued before the learned judge. Assuming there was a concluded contract, to which the law of England ought to be applied, it would appear to have been a contract for work and labour (*Robinson* v. *Graves* [1935] 1 K.B. 579) and thus outside the ambit of s. 4 of the Sale of Goods Act, 1893; the absence of writing would therefore not render it unenforceable. But is such a contract subject to English law? True, it was made in England and was presumably intended by the parties to be carried out in this country. But the nationality and domicil of the plaintiff were German; the personal law of the defendant was Mohammedan law, and the third parties for whose alleged benefit the contract was made were described as Pekingese. Taking the broad point of view, one might say that these last-named were the most closely concerned of all the parties, since without their co-operation the work could not even have been commenced. No evidence having been given of any voluntary acquisition on their part of a new domicil of choice, it must be submitted that the judge ought to have taken into consideration the law of their Chinese domicil of origin. In this connexion it is significant that the plaintiff's own testimony supports the view that they were "saving face," which (as everybody knows) is an important feature of Chinese life and custom, and doubtless forms part of that country's common law. It is unfortunate that no evidence was called on this relevant and interesting topic, and it is a matter for severe criticism that the preliminary question of what was the proper law of the contract was ignored by the advocates on either side.

When we turn to the defendant's account of the matter, the complications are multiplied. According to her version, the plaintiff "suddenly appeared" in the defendant's drawing-room without invitation, having presumably been admitted by the defendant's Hungarian cook "who doesn't understand much English." The entry of this new personage into the story introduces a further conflict of legal principles. Assuming that the defendant (as she alleged) told the cook not to admit the plaintiff to her home, but that the cook (misled by her ignorance of the English language) nevertheless did admit her, was she in so doing acting as the servant or agent of the plaintiff, or as the agent of the defendant? And what has the Hungarian law of agency to say on the subject? By another reprehensible omission no expert on the relevant law of Hungary was called

by the defence, and a great opportunity has been missed of taking this important issue to appeal.

Now comes the most significant part of the whole business. "I told her (the artist) that I did not want the dogs painted. She immediately prostrated herself on the floor, pulled out a chalk and started to sketch my two Pekingese dogs, which had disappeared under the sofa." Here is powerful evidence indeed. By the law of England A may make a contract with B that B, for reward, shall do something for the benefit of C and D. But in this case C and D (the dogs) had not been consulted, and their conduct in retreating out of sight is the best possible evidence that they had their doubts as to the alleged beneficial results to themselves of such an arrangement. Call it frustration if you will; but we know of no case in the books where such a contract between A and B has been held binding after the third parties, for whose alleged benefit the contractual act is to be done, have evinced the strongest possible objections. Here again we are brought face to face with the question—does the law of England really apply?

To answer this question we must consider in detail the very suggestive conduct of the plaintiff in "prostrating herself on the floor" on entering the room. This is explicable only when attention is drawn to the origin and antecedents of the third parties in the case. For nearly three centuries, under the Manchu Emperors, and (according to some authorities) under their predecessors also, the Pekingese, a creature of the purest breed, with its massive head, its prominent eyes, its silky hair, its modestly concealed feet, its aristocratic mien and its disdainful expression of feature, was the Royal Dog of China, the Imperial pet, honoured, pampered and almost worshipped like the Emperor himself. The species was unknown to the West until after the occupation by British forces of the Summer Palace in Pekin in 1860, when a few specimens were brought to this country. The interests of the breed are still promoted by the Pekingese Club and the Pekin Palace Dog Association.

With this noble lineage in mind, it is not difficult to understand the behaviour of the plaintiff in performing the prescribed ritual of the *kow-tow* prior to commencing work upon the portrait. Nor is it difficult to see why the subjects of the portrait themselves should have retreated as far as possible, and emphatically refused the sittings, when they realized what was proposed.

To what school of painting the plaintiff-artist belongs the newspaper report does not disclose. To portray one's subject in a realistic manner is out of fashion among the *élite* in an age which confuses intellectualism with obscurity, and accepts unintelligibility as a sign of genius. A surrealist dog, half green, half purple, with three feet, a neck like a giraffe and an additional ear somewhere in the abdominal region—such a portrait, with or without a face, is more than canine flesh and blood can be expected to stand. *A fortiori*, a royal creature of ancient ancestry, the friend of Emperors and Khans, educated in the wisdom of the *Five Classics* and the Confucian doctrine of gentlemanly deportment, and nurtured on the flawless technique and exquisite taste of Ni Tsan, Shên Chou and the great painters of the Sung Dynasty, is unlikely to view with equanimity the prospect of seeing its dignified form and visage perpetuated in the barbaric style of modern Western art.

All of this provides additional argument for the assertion that the whole case should go to appeal and, if necessary, to the House of Lords itself on the issue that the decision should stand or fall according to the relevant sections of the Chinese Civil Code, and that, by the unthinking application of English law to the proved facts, a great miscarriage of justice has occurred.

A.L.P.

NEW COMMISSIONS

DERBY COUNTY

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Mrs. Elizabeth Austin Boardman, Alport Road, Youlgreave.
Miss Gwendoline May Bramwell, Clifford House, Hope, nr. Sheffield.
John Charles Britton, 236, Nottingham Road, Ilkeston.
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Harold Fletcher, Elmhurst, Wellfield, Matlock.
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Eric Wright, 14, Platt Street, Pinxton, Notts.

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ISLE OF ELY

John William Barnes, 26, Main Street, Littleport, Ely.
Frederick Charles Bedford, Lily Holt Cottage, Benwick, March.
Reginald George Curston, Holmleigh, Elm, Wisbech.
Charles Archibald Jacobs, 24, Station Road, Whittlesey.
Gordon Ralph Mason, 42, Cambridge Road, Ely.
Percy Harry Stevens, Witchford Road, Ely.
Albert Edward Underwood, 10, Nutholt Lane, Ely.
Harry William Wayman, 19, School Lane, Manea, March.

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John Hugh Brighton, Brook House, Ruskington, Sleaford.

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John Morgan Humphreys, Glynorig, Cemmaes.
Evan Hughes Jones, Rhiewgriafel, Aberhosan.
David Roydon Joseph, The Dingle, Llanerchydol, Welshpool.
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Major Charles John Vernon-Wentworth, Park House, Friston, nr. Saxmundham.
Mrs. Joan Stafford Williams, 1, Westgate Terrace, Long Melford.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Allotments—*Damage—Authority to prosecute.*

Section 19 (1) of the Allotments Act, 1922, provides as follows :

" Any person who by any act done without lawful authority or by negligence causes damage to any allotment garden or any crops or fences or buildings thereon shall be liable on summary conviction to a penalty not exceeding five pounds, but this provision shall not apply unless notice of this provision is conspicuously displayed on or near the allotment garden."

It is observed that the section deals with damage not only to an allotment garden itself and to fences and buildings thereon (all of which in cases where a local authority provides allotment gardens would normally be the property of the local authority), but also to crops (which would normally be the property of the plot-holder). The section does not seem to distinguish between cases where the property is vested in a local authority and cases where such property belongs to a private person, and I am concerned with the question who may institute proceedings. As regards damage (within the section) to its own property, the local authority would no doubt be the proper authority to institute summary proceedings under the Act. I am not, however, sure whether, in cases of damage to crops which are the property of a plot-holder, the local authority would have a *locus* to take proceedings, or whether the plot-holder himself must do this.

May I please have your opinion on this matter, with a reference to the appropriate statutory or other authority on the point. I would also be glad if you could please refer me to any other power which a local authority may have to institute proceedings where the crops or other property of a plot-holder (on an allotment or allotment garden provided by a local authority) have been damaged, destroyed or stolen. DALL.

Answer.

The Act of 1922 does not contain a section like s. 253 of the Public Health Act, 1875, or s. 298 of the Public Health Act, 1936, restricting the right to prosecute. *Prima facie*, therefore, the ordinary rule applies, that an information can be laid by any person : per Kay, L., in *R.* v. *Stewart* (1896) 60 J.P. 356. Sections 20, 25, etc., of the Malicious Damage Act, 1861 ; ss. 33 *et seq.* of the Larceny Act, 1861 ; s. 14 of the Criminal Justice Act, 1914, and s. 8 of the Larceny Act, 1916 may also be considered.

2.—Children and Young Persons—*Parental contributions—Children Act, 1948—Children and Young Persons Act, 1933.*

In certain circumstances local authorities under the powers contained in the Children and Young Persons Act, 1933, and the Children Act, 1948, become responsible for children who are committed to their care and can recover the cost of maintenance from the parents of the children.

By virtue of s. 23 of the Children Act, 1948, ss. 86-88 of the Children and Young Persons Act (which provide for the recovery of contributions from parents) apply to children received into the care of the local authority under s. 1 of the 1948 Act as they apply to children committed to the care of the local authority as a fit person.

Section 87 (4) of the 1933 Act lays down :

(*a*) Subject to the provisions of this subsection a contribution order shall be enforceable as an affiliation order and the enactments relating to the enforcement of affiliation orders shall apply accordingly subject to any necessary modifications ; and

(*b*) Section 30 of the Criminal Justice Administration Act, 1914 (which contains provisions as to orders for the periodical payment of money made by courts of summary jurisdiction) shall apply to every contribution order whether the court which made it was, or was not, a court of summary jurisdiction.

Section 88 (2) (*d*) of the 1933 Act states that where an order is made under that section *i.e.*, s. 88 (which is in respect of orders made in respect of illegitimate children and, therefore, in my opinion not relevant unless the children are illegitimate) s. 1 of the Affiliation Orders Act, 1914, shall not apply in relation to affiliation orders.

Section 1 (3) of the Affiliation Orders Act, 1914, which would appear to apply by virtue of s. 87 (4) (*a*) of the Act of 1933 lays down *inter alia* :

" On request in writing of the mother or other person entitled to recover payments under the affiliation order it shall be lawful for the collecting officer to proceed in his name as such officer on behalf of the mother or such other person against the putative father for the recovery of payments under the affiliation order, and in such case the liability of the person on whose behalf the proceedings are taken for all costs properly incurred in or about the proceedings shall be the same as if the proceedings had been taken by that person."

Section 30 of the Criminal Justice Administration Act, 1914, which applies by virtue of s. 87 (4) (*b*) of the Act of 1933 sets out further procedure for the recovery of periodical payments but does not include the same provision as does s. 1 (4) of the Affiliation Orders Act, 1914. Section 30 (5) of the Criminal Justice Administration Act, however, does contain the provision that :

" Nothing in this section shall prejudice or affect the powers and duties of courts of summary jurisdiction under the Affiliation Orders Act, 1914."

The clerk to the magistrates at one of the petty sessional courts in the county has, on being requested in writing by the council to take proceedings to enforce an order in which he was named as collecting officer under the Acts, declined to do so as he states that he is of the opinion that he has no power to do so.

He agrees that by s. 87 (4) of the 1933 Act a contribution order shall be enforceable as an affiliation order but maintains that this simply applies to the method of enforcement, *i.e.*, by distress and imprisonment.

He states (on what authority I do not know) that s. 1 of the Affiliation Orders Act, 1914, only applies to an affiliation order and that any other order for the periodical payment of money through an officer of the court is made under s. 30 of the Criminal Justice Administration Act, 1914, which (as is admitted) contains no provision similar to the Affiliation Orders Act, 1914, as to the institution of proceedings for recovery by a collecting officer. He further states that exactly the same position obtained with regard to orders under the Summary Jurisdiction (Married Women) Acts until the passing of the Married Women (Maintenance) Act, 1949, whereby the legislature made special provision for a collecting officer to take proceedings to enforce arrears under a married woman order. No similar provisions have, to his knowledge, been made with regard to contribution orders.

In respect of the above statement, it is submitted that the cases are not at all similar since the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1925 contained no such provision as is contained in s. 87 (4) (*a*) of the Children and Young Persons Act, 1933.

He further states that, if the council's contention is correct, then a collecting officer always had power to take proceedings to enforce a married woman order and the power conferred on him by the Married Women (Maintenance) Act, 1949, was unnecessary. He adds that he had always contended that a collecting officer had no power himself to institute proceedings to enforce a married woman order and that the special power given by the Act of 1949 confirms his view.

As regards these contentions, I would make the following observations :

1. I do not see on what grounds he states that s. 1 of the Affiliation Orders Act, 1914, does not apply as s. 88 of the 1933 Act only applies in the case of illegitimate children.

2. It is not agreed that there is any similarity between the cases in question and the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1925 cases, since the latter Acts did not contain any provision of the like nature as that contained in s. 87 (4) (*a*) of the 1933 Act.

I should be very much obliged if you would consider the above question and inform me whether or not in your opinion the magistrates' clerk as collecting officer in respect of an order under the 1933 and 1948 Acts has power to institute proceedings to enforce such an order (except in the case where the order is made in respect of an illegitimate child under s. 88 of the 1933 Act). SEAN.

Answer.

We think the clerk to the justices is correct in his view, and generally for the reasons he has given. So far as married women orders are concerned, it is provided by s. 9 of the Summary Jurisdiction (Married Women) Act, 1895, that arrears are recoverable in the same way as arrears under an affiliation order and we think that means by the same process and subject to the same conditions without importing such a provision as is contained in the Affiliation Orders Act, 1914. The distinction between the duties of collecting officers under the Affiliation Orders Act, 1914, and in relation to other orders is maintained in s. 21 of the Justices of the Peace Act, 1949. Compare also the Emergency Laws (Miscellaneous Provisions) Act, 1947, second schedule, para. 5.

Our learned correspondent has set out the arguments on both sides fully and clearly. We are not prepared to be dogmatic about the point, but we think the clerk to the justices ought not to proceed in his own name without a definite statutory authority.

The words in s. 87 (4) of the Children and Young Persons Act, 1933, " the enactments relating to the enforcement of affiliation orders shall apply accordingly, subject to any necessary modifications," have caused us some difficulty, since no doubt it could be argued that the Affiliation Orders Act, 1914, is an enactment relating to the enforcement of affiliation orders. We think, however, that the words we have put in inverted commas are inserted by way of limiting the application of enactments by certain modifications, and not by way of enlarging the application of statutory provisions relating to enforcement. That is why we do not think s. 87 (4), *supra*, relates to the duties of collecting officers, but is intended to describe the process of the court by which arrears are enforced.

3.—Highway—*Making safe temporary obstructions.*

It frequently occurs that some portion of private property, *e.g.*, the garden wall adjoining the highway, collapses causing a temporary obstruction which would be a danger to the public using the highway. The council's practice is to provide temporary fencing and lights and to charge the expenses involved to the owner of the adjoining premises. In the great majority of cases the expenses are paid without demur. An owner has, however, declined to pay expenses, and I shall be obliged if you will indicate :

(i) whether it is the duty of the highway authority to make safe the highway in the cases above referred to ; and

(ii) under what statutory provision or rule of law the expenses of the highway authority may be recovered. AVER.

Answer.

(i) There is a latent ambiguity in this question ; we do not think there is a duty upon the highway authority in the sense that they are indictable for not removing the fallen material, but the common law duty of keeping highways free from obstruction (restated in s. 26 of the Local Government Act, 1894) applies in our opinion to obstruction by material falling on the highway from adjacent premises, as well as to deliberate obstruction.

(ii) There is no explicit statutory power, but *see Louth* v. *West* (1896) 60 J.P. 600. We think, also, that the highway authority have the same right to recover in tort as any other landowner would have.

4.—Land—*Compulsory purchase—Entry before price fixed—Profit made by acquiring authority.*

This council made a compulsory purchase order under the Housing Act, 1936, and the Acquisition of Land (Authorization Procedure) Act, 1946, for the acquisition of a piece of land to be used as a housing site. The order was confirmed by the Minister and all provisions of the 1946 Act with regard to serving copies of the confirmation order and advertising were complied with. Notice to treat was served on the interested parties but to date the purchase price of the land has not been settled.

After service of notice to treat, the council served notice of entry on the owners under para. 3 of Part I of sch. 2 to the 1946 Act. On the expiry of the notice, they entered into possession and started building. Some of the houses on the site have now been completed and the council wish to allow the houses to be occupied by persons on their housing list. As the council are not the owners of the land, and will not be owners for some time owing to the likelihood that the price will be referred to the Lands Tribunal, my own opinion is that the council could allow persons on the housing list to occupy the houses by means of a licence in place of a tenancy agreement The council are, of course, liable to pay interest on the purchase price when it is assessed, for the period during which the land has been in their possession, but this would be less than the sum which would be received by the council for any right of occupation granted by them to persons on the housing list in respect of the right to occupy the houses.

I shall be glad to have your views as to whether there is anything to prevent the council from lawfully granting such licences, and as to whether there are any means by which the owners of the land could opt to take the money due to the council under licences, in place of the interest on the purchase price. My own opinion is that the interest is statutory and that the owners have no alternative than to accept this. DIW.

Answer.

We see no objection to the course suggested, and agree that the owners will not be entitled to more than their interest on the purchase money.

5.—Landlord and tenant—*Covenant by tenant to pay outgoings—Owner's drainage rent.*

Where a tenant has entered into an agreement to pay " all rates and taxes payable in respect of the premises (except landlord's property tax)," would you advise on the authority of *Smith* v. *Smith* [1939] 4 All E.R. 312 that a local authority is not liable to refund to a tenant of a council house the owner's proportion of a drainage rate. CROX.

Answer.

Yes : in the case cited the court distinguished this from a charge, such as sch. A tax, of which the burden cannot be shifted by agreement.

6.—Magistrates—*Practice and procedure—finding of " case to answer " after submission of " no case "—Subsequent further address to court in favour of acquittal but no evidence called by defence—Decision to acquit—Point of law.*

On November 22 last, A and B were charged with carelessly driving motor vehicles in connexion with an accident in which they were both involved, and after hearing the evidence for the prosecution the defendants' solicitors both submitted there was no case to answer but were overruled by the magistrates.

The defendants' solicitors then addressed the court and stated that they did not propose to call any evidence. The chairman of the bench re-called the police constable with regard to the distances of the road signs from the point of impact, and also asked one or two questions of one of the defendant's solicitors to clear up one or two other doubts in their minds. The magistrates then further considered the cases and decided to dismiss both charges.

Notices have now been served by the prosecution requesting the magistrates to state a case on the grounds that their determination was erroneous in point of law.

I cannot see where any point of law is involved and I shall be glad to have your views on the matter. Apparently the magistrates, after re-calling the police constable and hearing the addresses of the defending solicitors, felt that in all the circumstances the cases should be dismissed, and I fail to see why they should not be entitled to change their minds. JKPW.

Answer.

The magistrates, we think, do not decide a case until, at the conclusion of the evidence and of all the speeches, they announce their decision to convict or to acquit. They are, therefore, entitled to acquit in spite of their earlier expression of opinion that there was a case to answer, and we do not think that their change of mind, though it may excite comment, raises of itself a point of law.

The only point of law which may arise, as we see it, is whether, on the evidence given by the prosecution (to the extent that it was accepted by the court) with no evidence called in rebuttal, the magistrates

could properly find that the charge was not proved. We can express no opinion on this because we do not know what facts were found by the court to have been proved by the prosecution.

We are assuming that no point is being made that there was any irregularity in the procedure in that the defence were allowed to address the court twice although no evidence was called by the defence (*see* Criminal Justice Act, 1948, s. 42). The submission of no case was, presumably, purely a formal one and was not treated as "addressing the court."

7.—Rating and valuation—*Unoccupied property—Lands Clauses Consolidation Act*, 1845.

A large house, acquired by the county council as a children's residential nursery under s. 15 of the Children Act, 1948, has remained unoccupied for a period of almost two years whilst works of adaptation and conversion have been carried out. The property was acquired by agreement under the Local Government Act, 1933, which incorporates s. 133 of the Lands Clauses Act, 1845. The rating authority (a rural district council) contend that the county council are liable to pay the equivalent of the general and special rates in respect of the period while the works of adaptation, etc., were being carried out, based on the rateable value at the date of the passing of the special Act, *i.e.*, the Local Government Act, 1933. The view of the county council is that no works have been executed which were authorized by the special Act, and that having regard to the definition of "the works" in s. 2 of the 1845 Act, s. 133 has no application. Attention has also been drawn to the note in *Lumley* (12th edn., vol. I, p. 58) that "it is doubtful whether [s. 133] has any application at all on a purchase of lands by agreement." Your opinion as to the county council's liability, if any, would be appreciated. FRU.

Answer.

We do not think the county council are liable to be rated (*see* the cases cited at p. 58 in vol. I of *Lumley* (12th edn.)) Nor do we consider that the council are under liability to meet any deficiency of the poor's rates under s. 133 of the Lands Clauses Consolidation Act, 1845. We think that this section has no application to a purchase of lands by agreement.

8.—Road Traffic Acts—*Dangerous and careless driving—Appeal against s. 11 conviction successful at quarter sessions—Subsequent fresh charge under s. 12.*

It has been customary in this county for the police to charge offenders in many cases both with dangerous driving under s. 11, and with careless driving under s. 12 of the Road Traffic Act.

In such cases the defendant is asked (after being given the option of going to quarter sessions on the major charge) to plead to both charges.

Assuming a plea of not guilty on both, the evidence is heard and the magistrates convict (assuming a conviction) on either of the charges, the other charge being, in the case of a conviction under s. 11, recorded as "withdrawn" or in the case of a conviction under s. 12 "Dismissed."

One defendant, charged in this way and convicted under s. 11, appealed to the appeals committee and his appeal was allowed. The police now propose to charge him under s. 12.

Your advice is sought as to a possible plea of "*autrefois acquit*." In view of what happened it seems difficult to say that the defendant was not in peril on the s. 12 charge. JEMEL.

Answer.

We discussed the question of these alternative charges at 112 J.P.N. 15 (P.P. 12) and in articles at pp. 226 and 305 of the same volume. For the reasons given in the P.P. answer and in the second of the two articles we do not like a plea being taken to both charges at the same time.

Our answer to the question here put is that we think that on his appeal the defendant was in peril of conviction under s. 12, because the appeal tribunal could, in the exercise of one of the powers which a summary court can exercise on a charge under s. 11 have adopted the procedure in s. 35 of the 1934 Act. We consider, therefore, that a charge under s. 12 should not be preferred now.

9.—Road Traffic Acts—*Driving while disqualified—Offender aged twenty—Imprisonment—Effect of* Lines *v.* Hersom [1951] 2 *All E.R. 650 and Criminal Justice Act*, 1948, *s.* 17 (2).

A youth of twenty is found guilty of driving a motor vehicle while disqualified. Having regard to s. 7 of the Road Traffic Act, 1930, the decision in *Lines* v. *Hersom* [1951] 2 All E.R. 650, and s. 17 (2) of the Criminal Justice Act, 1948, must the court impose imprisonment where there are no "special circumstances," or can a fine be imposed?

Can the court find "special circumstances" under the provisions of s. 17 (2) above? JP.

Answer.

We think that s. 7 (4) of the 1930 Act must, in spite of the offender's age, be read in the light of *Lines* v. *Hersom*, *supra*, and that a court is empowered to impose a fine only if there are circumstances special to the case which justify that course being taken. The offender's age is special to him and not to the offence. We think that s. 17 (2) of the 1948 Act must be given effect to by considering whether one of the possible alternatives to imprisonment, *i.e.*, borstal training or detention in a detention centre, if one is available, is not a more appropriate method of dealing with the offender.

10.—Road Traffic Acts—"*Road*"—*Failing to stop after accident—Car park of a transport drivers' café—Effect of Bugge* v. *Taylor* (1941) 104 *J.P.* 67 *and Thomas* v. *Dando* [1951] 1 All E.R. 1010.

I should be glad of your opinion on the following: The defendant was summoned under s. 22 of the Road Traffic Act, 1930, for failing to stop after an accident.

The facts showed that A's lorry was parked on the car park of a transport café which adjoins the main trunk road. Whilst stationary, a collision occurred between A's lorry and a lorry driven by the defendant who was reversing for the purpose of leaving the car park. There was no evidence that the car park was fenced in any way from the main road. The entrances are erected on either end. I have considered a number of cases and I am in difficulties because of the decision in *Bugge* v. *Taylor* [1941] 1 K.B. and *Thomas* v. *Dando* [1951] 1 All E.R. 1010. The court did not have the advantage of a solicitor on either side and no cases were quoted.

I understand on the case of *Harrison* v. *Hill* (1932) S.C. (J.) 13 quoted in note D on p. 2121 of *Stone*. There was no evidence before the court that the car park is used by any member of the public other than those using the café. JACK.

Answer.

The facts in the case referred to us by our correspondent are, it seems to us, nearer to those of *Bugge* v. *Taylor* than to those of *Thomas* v. *Dando*. In the latter case it appears that the shop owner's car was the only one to be parked in the place in question, which was not a car park in the accepted sense of the term. Here we are told that this is a car park, open to the road, and offered and available for use as such by all members of the public who wished to frequent the café. We think, therefore, that this fact might be said, on the authority of *Bugge* v. *Taylor*, to entitle a court to find that this car park is a road, but we do not feel that they must so find. It is very much a borderline case.

OFFICIAL AND CLASSIFIED ADVERTISEMENTS, ETC. (*cont'd.*)

COUNTY BOROUGH OF EAST HAM

Town Clerk's Department

Town Planning Legal Assistant

APPLICATIONS are invited for the above appointment at a salary in accordance with Grade A.P.T. III (£500 × £15—£545 per annum) plus London Weighting.

Forms of application, which must be returned not later than April 7, 1952, and details of the duties of the post may be obtained from the undersigned.

R. H. BUCKLEY,
Deputy Town Clerk.

Town Hall,
East Ham, E.6.
March, 1952.

DEVON COUNTY COUNCIL

Appointment of Assistant Solicitor

APPLICATIONS are invited for this whole-time appointment at a salary of £1,000, rising by annual increments of £50 to £1,200 per annum.

Applicants must have had considerable Local Government experience, preferably with a County Council. The appointment will be terminable by three months' notice on either side and the selected candidate will be required to pass a medical examination for superannuation purposes.

Applications, stating present salary, age and details of experience, together with the names of two persons to whom reference may be made, should be forwarded to me by not later than April 12, 1952.

Canvassing in any form will disqualify.

H. A. DAVIS,
Clerk of the Council.

The Castle,
Exeter.

Amended Advertisement

BOROUGH OF FOLKESTONE

Appointment of Common Law and Conveyancing Clerk

APPLICATIONS are invited for the above position at a salary in accordance with Grade A.P.T. III (£500/£545 per annum). Applicants should possess a good knowledge of conveyancing and general legal work. The successful applicant will also be required to undertake such other duties as may be assigned to him. Experience in the office of a clerk to a local authority is desirable.

The appointment will be subject to (*a*) the Local Government Act, 1937, (*b*) the passing of a medical examination, (*c*) the National Scheme of Conditions of Service and will be terminable by one month's notice on either side.

Housing accommodation will be made available.

Applications, stating age, and full details of experience, with the names and addresses of two referees to whom reference can be made, should reach the undersigned by Saturday, April 5, 1952.

C. F. NICHOLSON,
Town Clerk.

Municipal Offices,
West Terrace,
Folkestone.
March 12, 1952.

BOROUGH OF GUILDFORD

Deputy Town Clerk and Deputy Clerk of the Peace

APPLICATIONS are invited from solicitors with local government experience for the above appointments which will become vacant on July 1 next, at a salary of £1,090 per annum rising by three annual increments to £1,240 per annum.

The post is superannuable and the successful candidate will be required to pass a medical examination.

Applications, with the names of three referees, should reach me not later than April 10.

Canvassing will disqualify, and relationship to any member or officer of the Council must be disclosed.

While housing accommodation cannot be guaranteed, every assistance will be given to the successful candidate in finding suitable accommodation.

HERBERT C. WELLER,
Town Clerk.

Municipal Offices,
Guildford.

COUNTY BOROUGH OF SUNDERLAND

Appointment of Junior Court Clerk

APPLICATIONS are invited for the appointment of a junior court clerk in the office of the clerk to the justices. Age not less than 20 and not more than 25 years.

Applicants should have had general office experience. Shorthand and typewriting is essential.

The salary will be in accordance with the General Division of the National Joint Council Scales. (Age 20—£220. Age 25—£335—Maximum £425 at 30 years).

The appointment is subject to the provisions of the Local Government Superannuation Act, 1937, and the successful applicant will be required to pass a medical examination.

Applications, stating age and particulars of experience, with names and addresses of three persons to whom reference may be made, and endorsed "Junior Court Clerk," must reach the undersigned not later than March 25, 1952.

J. P. WILSON,
Clerk to the Justices.

Sessions Courts,
Gillbridge Avenue,
Sunderland,
Co. Durham.

CITY OF BIRMINGHAM

(1) Legal and Conveyancing Clerk
(2) Conveyancing Clerk

APPLICATIONS invited for these posts—salary (1) A.P.T. VI (£645-710) and (2) A.P.T. II (£470-515). Pension Scheme—med. exam. Applications with three recent testimonials (copies) to Town Clerk, Room 30B, Council House, Birmingham, by April 9, 1952. Canvassing disqualifies.

BOROUGH OF GODALMING

Appointment of Town Clerk

APPLICATIONS are invited from barristers or solicitors with local government experience for the appointment of Town Clerk of Godalming and Clerk to the Godalming Joint Burial Committee at a salary of £1,100 per annum rising by annual increments of £50 to £1,400 per annum.

The appointment, which will be subject to a medical examination and will be determinable by three months' notice on either side, will be in accordance with the Conditions of Service set out in the second schedule of the recommendations of the Joint Negotiating Committee for Town Clerks and District Council Clerks.

Applications, stating age, qualifications and experience, together with copies of three recent testimonials, must reach me not later than the first post on Tuesday, April 8, 1952.

Canvassing, directly or indirectly, will disqualify.

A. V. RATCLIFF,
Town Clerk.

Municipal Buildings,
Godalming.

March 18, 1952.

ROYAL BOROUGH OF NEW WINDSOR

Town Clerk

APPLICATIONS are invited from solicitors with wide municipal experience for the whole-time appointment of Town Clerk and Solicitor to the Corporation. The salary will commence at £1,200 p.a. and proceed by annual increments of £50 to a maximum of £1,400 p.a.

The recommendations of the Joint Negotiating Committee for Town Clerks and District Council Clerks as to salary scales and conditions of service have been adopted, and will apply to the appointment, which will also be subject to the provisions of the Local Government Superannuation Act, 1937, and to three months' notice on either side. The successful candidate will be required to pass a medical examination.

It is possible that some assistance may (if required) be given towards obtaining housing accommodation.

Applications, giving particulars of age, qualifications and experience, and the names and addresses of three referees, must reach me by Monday, April 7, 1952.

Applicants must state whether to their knowledge they are related to any member or senior officer of the Council. Canvassing will disqualify.

R. WEBSTER STORR,
Town Clerk.

Municipal Offices,
Windsor.

March 18, 1952.

BOROUGH OF ANDOVER

Town Clerk's Department

Appointment of: (1) Assistant Solicitor *or* **(2) Legal Assistant (unadmitted)**

APPLICATIONS are invited for the above post, the choice between (1) and (2) to be made according to applications received. Either appointment would be subject to the National Conditions of Service, a medical examination and one month's notice in writing on either side. Salary offered: (1) A.P.T. Grade Va—VII, (2) A.P.T. Grade IV—Va; in either case according to qualifications and experience. The successful applicant will be required to assist in the administration of the Borough Quarter Sessions.

Applications, with the names of two referees, must be delivered to me not later than Wednesday, April 2, 1952.

J. F. GARNER,
Town Clerk and Clerk of the Peace.

"Beech Hurst,"
Weyhill Road,
Andover,
Hants.

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